

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**DATE:** March 4, 2013

**LEONARD DAVIS**  
**Judge Presiding**

Court Reporters: Shea Sloan  
Judy Werlinger

Law Clerk: Gabrielle LaHatte

Court Administrator: Rosa L Ferguson

**VIRNETX INC.**

**V**

**CISCO SYSTEMS, INC., ET AL**

**CIVIL ACTION NO: 6:10-CV-417  
JURY SELECTION & TRIAL**

**ATTORNEYS FOR PLAINTIFF**

**ATTORNEYS FOR DEFENDANTS**

**SEE SIGN-IN SHEETS**

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 9:05 am

**ADJOURN:** 4:05 pm

<b>TIME:</b>	<b>MINUTES:</b>
9:05 am	Pretrial Hearing prior to jury selection:
	Court addressed the parties regarding the Cisco's Motion to Dismiss DJ counterclaims without prejudice (Doc No. 663 & 722). Court denied motions.
	Mr. Desmarais addressed the Court regarding objections and the parties' agreement to 2 of them. Mr. Desmarais objects to Microsoft's Verdict and related evidence and the licenses plaintiff wants to use in its damages case as non-comparable. Mr. Desmarais advised that parties in agreement to a running objection throughout the trial for preservation of appeal. Mr. Cassidy does agree to the running objection as to Microsoft. Mr. Desmarais addressed the Court on the noncomparable licenses with all the other co-defendants. Mr. Cassidy responded they agree with regard to the licenses.
	Mr. Desmarais renewed his objection to the 14 hours of trial time. Mr. Desmarais addressed the Court on VirnetX's willfulness allegations and plaintiff going forward without finding the objection prong and being able to rely on the re-exam status, and objects to excluding re-exams. Mr. Desmarais objects to the plaintiff mentioning Global Hawk and Osama Bin Laden.
	Mr. Desmarais addressed the Court regarding plaintiff disclosing Dr. Jones in their opening case as the validity expert. Mr. Desmarais addressed the Court and understands the plaintiff won't be offering any validity opinions. With that representation, they withdraw objection to Dr. Jones. Mr. Caldwell responded and will not go into validity with Dr. Jones in case-in-chief.
	Mr. Cassidy responded to trial time objection; plaintiff has dropped 10 claims and a patent

TIME:	MINUTES:
	and they are down to 4 patents and 12 claims. Plaintiff believes time is ample. Court is aware of the time limitations and prior art references and this case is not any more complex than the previously tried Apple case nor any other cases. Court notes objection for the record on time.
	Mr. Cawley responded as to willfulness and the Court will decide the objective prong and the jury the subjective prong. Court will determine the objective prong prior to being submitted to the Jury.
	Mr. Caldwell asked to introduce Dr. Jones in case-in-chief and Mr. Curry putting him on at the end of trial on validity rebuttal. Mr. Desmarais does not object. Court will allow.
	Court inquired about Dr. Weinstein and what the plaintiff has elected to go with. Mr. Cassady responded and plaintiff is going with Nash Bargaining Royalty Base. Mr. Bondor responded. Mr. Bondor will be filing a renewed <i>Daubert</i> motion later today and objects to the Nash Bargaining Solution.
9:15 am	Court in recess.
9:25 am	<b>Jury Panel seated in the courtroom.</b>
	Case called. Parties announced ready.
	Court addressed the Jury panel and welcomed them to jury service.
	Court gave the jury a brief overview of the case.
	Court conducted voir dire examination of the Jury Panel.
	Court asked counsel for the parties to introduce themselves, co-counsel, clients and any witnesses from the East Texas area.
	Mr. Cawley introduced himself, co-counsel, and client, and advised Plaintiff has no witnesses from the East Texas area.
	Mr. Jones introduced himself, co-counsel, and client, and advised Defendant has one witness from the Austin area.
	Court inquired if anyone knew those mentioned by Mr. Cawley or Mr. Jones. No response.
	Mr. Cawley conducted voir dire examination of the jury panel on behalf of Plaintiff.
	Mr. Jones conducted voir dire examination of the jury panel on behalf of Defendant.
	Court addressed the Jury Panel and asked additional questions.
	Court will allow the panel to take a 20 minute break and gave instructions to not discuss this case. Juror #10, 14, 9 and 15 addressed the Court regarding hardships. Juror No. 1 remained and approached the bench.
	Jury panel excused.
	Court addressed the parties and asked to approach the bench.
	Court excused Juror #1, 5 and 10 for cause. Court gave each side 3 strikes.
10:50 am	Court in recess.
11:10 am	Trial resumed. <b>Jury Panel seated in Courtroom.</b>
	Court asked Clerk to read the names of the jurors selected. Clerk read the 8 names of the jurors. Court thanked and excused the remaining Jury Panel. Court asked the Clerk to administer oath to Jury Panel. <b>Jury sworn.</b>
	Court gave the Jury some preliminary instructions.
12:00 pm	Court addressed the Jury and will excuse them for lunch.
12:00 pm	Court in recess until 12:40 pm.

<b>TIME:</b>	<b>MINUTES:</b>
12:40 pm	Trial resumed. <b>Jury entered Courtroom.</b>
	Mr. Cawley presented opening statement on behalf of VirnetX to the Jury.
	Mr. Desmarais presented opening statement on behalf of Cisco to the Jury.
	Court asked witnesses to stand and state their names. <b>Robert Short, Cullen Jennings, Mark Jones, Roy Weinstein, Scott Nettles, Kendall Larsen, James Carmichael, Stephen Becker, Peter Alexander and Paul Clark</b> stood and were sworn in as witnesses.
	Mr. Cawley asked for the Rule to be invoked. Court explained the Rule to the participants and excused those witnesses with the exception of experts and client representatives.
	Court asked for exhibits to be tendered.
	Mr. Cassady tendered Plaintiff VirnetX's Pre-Admitted Trial Exhibit List for March 4, 2013 and without objection, exhibits on list admitted. Admitted Exhibits: <b>Plaintiff's Exhibit 1 – 6, 10 – 12, 16 – 18, 27, 32, 36, 51 – 53, 107, 112, 121, 122, 124 – 129, 159, 174, 177, 186, 187, 201, 213, 292, 437, 438, 625 – 627, 654, 722, 727, 732, 747, 753, 755, 758, 763.</b>
	Mr. Caldwell called <b>Dr. ROBERT SHORT</b> to the witness stand. Witness previously sworn.
	Direct examination of Dr. Short by Mr. Caldwell.
2:15 pm	Court in recess until 2:30 pm
2:30 pm	Trial resumed. <b>Jury seated in the courtroom.</b>
	Direct examination of Dr. Short by Mr. Caldwell continued.
	Mr. Caldwell passed the witness. Cross examination of Dr. Short by Mr. Desmarais.
	Mr. Desmarais marked demonstrative board as <b>Defendant's Demonstrative #2000</b> , and without objections as to it being demonstrative, so marked. Cross examination continued.
	Mr. Caldwell asked to approach bench. Bench conference held.
4:05 pm	Court addressed the Jury and will recess them until 9:00 am. Court reminded Jury of Court's instructions. Jury excused for the day.
	Court gave parties their times. Plaintiff has used 1:34 and Defendant has used 31 minutes.
4:05 pm	There being nothing further, Court adjourned for the day.